

# **EXHIBIT 1**

# **EXHIBIT 1**

1 LEIGH GODDARD, NV Bar #6315  
JESSICA WOELFEL, NV Bar #11885  
2 McDonald Carano Wilson LLP  
100 West Liberty Street, 10<sup>th</sup> Floor  
3 P.O. Box 2670  
Reno, NV 89505-2670  
4 Telephone: (775) 788-2000  
Facsimile: (775) 788-2020  
5 Email: lgoddard@mcdonaldcarano.com  
and jwoelfel@mcdonaldcarano.com  
6

7 *Attorneys for Plaintiff / Counter-Defendant*  
8 *Nevada Controls, LLC*

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 \* \* \*

12 NEVADA CONTROLS, LLC, a Nevada  
Limited Liability Company,

Case No.: 3:12-cv-00068-HDM-VPC

13 Plaintiff,

14 v.

**AFFIDAVIT OF LEIGH GODDARD  
IN SUPPORT OF STATEMENT OF  
ATTORNEY'S FEES AND COSTS**

15 WIND PUMP POWER, LLC, a Kansas  
16 Limited Liability Company, SUNFLOWER  
WIND, LLC, a Kansas Limited Liability  
17 Company; DAN RASURE, an individual,

18 Defendants.  
19 \_\_\_\_\_/

20 State of Nevada     )  
                                  ) ss:  
21 County of Washoe    )

22 I, LEIGH GODDARD, do hereby swear under penalty of perjury that the  
23 assertions of this affidavit are true.

24 1. I am over the age of 18 years and a resident of Washoe County, Nevada.  
25 I make this affidavit based upon personal knowledge, except where stated to be upon  
26 information and belief, and as to that information, I believe it to be true. If called upon  
27 to testify as to the contents of this Affidavit, I am legally competent to testify to the  
28 contents of the Affidavit in a court of law.

2. This Affidavit is submitted in support of the Statement of Attorneys Fees and Costs of Plaintiff Nevada Controls, LLC ("Nevada Controls"). I certify that I have reviewed the content of the Statement and believe its contents to be true and correct.

3. I am presently a partner in a law partnership known as McDonald Carano Wilson LLP, 100 West Liberty Street, Reno, Nevada, 89501. I have been licensed as an attorney since 1997 and have actively practiced law in the field of litigation since that time. I have also been active in bar association activities and have been elected and served as President of the Nevada Chapter of the Federal Bar Association, and presently serve as a Master of the Bruce R. Thompson Inn of the American Inns of Court. I have been selected by my peers for membership in the Legal Elite and Mountain States Superlawyers, where I have also been selected as one of the Top 50 Women Attorneys. Over the years, I have taken a first chair role in litigating numerous jury and bench trials as well as private arbitrations.

4. I and other attorneys from the McDonald Carano Wilson law firm are counsel for Nevada Controls in this action. I have been a lead counsel in prosecuting Nevada Controls' claims in this action.

5. In accordance with Local Rule 54-16, I confirm that I am responsible for the invoices and billings from McDonald Carano Wilson LLP in the above-entitled case. I confirm that all McDonald Carano Wilson LLP invoices have been reviewed and edited by me before being presented to Nevada Controls and that the fees and costs charged in these invoices are reasonable.

6. McDonald Carano Wilson LLP, was retained by Nevada Controls to pursue the return of funds paid to the Defendants for the design and construction of wind turbines.

7. The engagement of McDonald Carano Wilson LLP by Nevada Controls was documented in a formal Engagement Agreement, dated December 22, 2011, which specifically defined the scope of representation.

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8. Pursuant to the Engagement Agreement, attorneys and staff at McDonald Carano have provided legal services to Nevada Controls in the prosecution of this action. With respect to the Motion to Compel, these professional services included strategy development, meeting and conferring with out-of-state counsel for the Defendants, e-mail contact with the Defendants, research and preparation of the motion to compel and reply.

9. The Engagement Agreement identifies that the professional services will be provided at hourly rates established in the Engagement Agreement. I have been primarily involved with the work related to this discovery dispute. I have also been assisted in this matter by Jessica Woelfel (NV Bar #11885) and by Adam Hosmer-Henner (NV Bar #12779), who is licensed in the states of New York and Nevada. In addition, the Engagement Agreement allowed for the retention of legal assistants/paralegals at an hourly rate. The Engagement Agreement provides for payment to McDonald Carano Wilson LLP of the following hourly rates as follows:

Leigh Goddard, \$350 per hour

Jessica Woelfel, \$275 per hour

Adam Hosmer-Henner, \$265 per hour

10. Nevada Controls' Complaint alleges claims against Defendants Windpump Power, LLC ("WPP"), Sunflower Wind ("Sunflower") and Dan Rasure as follows: (1) Breach of Contract, (2) Breach of the Implied Covenant of Good Faith and Fair Dealing, (3) Declaratory Relief – Alter Ego (Dan Rasure), (4) Declaratory Relief – Alter Ego (Sunflower Wind), (5) Unjust Enrichment, and (6) Fraud. (See Doc. #1).

11. Defendants originally retained the law firm of Parsons Behle & Latimer to serve as their counsel, and they filed an answer and counterclaim. (See Doc. #12). On May 11, 2012, the law firm moved to withdraw as counsel, and on June 14, 2012, the Court granted the motion after a hearing. (See Doc. #27). In the Court's Order, however, it required that Defendants WPP and Sunflower must retain new counsel and file notices of appearance for their new counsel no later than July 5, 2012. (See id.).

At the same hearing, Rasure appeared telephonically and acknowledged receipt of Nevada Controls' discovery requests and that responses were due on July 5, 2012.

12. The Defendants failed to retain new counsel by July 5, 2012, as ordered by Magistrate Judge Cooke, and they failed to serve their discovery responses.

13. As a result, Nevada Controls filed a Motion to strike the answer and counterclaim of Sunflower Wind, LLC and Windpump Power, LLC, and to enter default against the entities. (Doc. #28). The Court conducted a hearing on the Motion on August 23, 2012, at which time Defendant Dan Rasure indicated that he had retained out-of-state counsel, Jerry Wieslander, and that he was working to retain local counsel to represent him in the action.

14. The Court deferred ruling on the Motion to Strike and scheduled another hearing for November 6, 2012. (Doc. #32).

15. Nevada Controls also moved to compel responses to the discovery requests. Before doing so, however, I contacted the out-of-state attorney representing the Defendants to discuss the outstanding discovery requests. I also attempted to reach Dan Rasure directly and sent him several e-mails. My informal attempts at resolution of the discovery dispute were unsuccessful.

16. As a result, Nevada Controls filed a Motion to Compel the discovery responses, which was unopposed by the Defendants. In that Motion, Nevada Controls also sought an award of the attorney fees and costs incurred in this discovery dispute.

17. The Motion to Compel makes reference to attorney's fees incurred in relation to the Motion. However, the time on this matter has been adjusted since that Motion was filed, as reflected on the actual invoices generated for the client. The actual attorney time billed to the client related to this discovery dispute is as follows:

Date	Attorney	Hours	Amount
8/29/12	Leigh Goddard	.50	\$ 175.00
8/30/12	Leigh Goddard	.50	\$ 175.00
9/19/12	Adam Hosmer-Henner	1.00	\$ 265.00
9/20/12	Adam Hosmer-Henner	1.50	\$ 397.50
9/21/12	Leigh Goddard	1.00	\$ 350.00

9/24/12	Leigh Goddard	1.00	\$ 350.00
9/25/12	Leigh Goddard	.25	\$ 87.50
9/27/12	Leigh Goddard	.25	\$ 87.50
10/17/12	Leigh Goddard	.25	\$ 87.50
		TOTAL:	\$1,975.00

18. The total actual costs incurred by Nevada Controls related to the discovery dispute are: \$29.10. A true and correct copy of the bill of costs is attached to the Statement as **Exhibit 2**.

19. All attorney fees and costs identified above were reasonable and necessary to represent Nevada Controls with respect to this discovery dispute. Although the discovery dispute is not particularly complex, Nevada Controls incurred this expense unnecessarily as a result of Defendants' failure to respond to the discovery requests. The dispute has been complicated even more by Defendants' failure to retain counsel with which a meaningful discussion could be had related to the outstanding discovery requests and the discovery plan. Attempts to discuss an adjustment of the discovery schedule have been similarly thwarted by the lack of communication with Defendants.

20. Attorney fees, professional time and costs incurred by Nevada Controls related to the discovery dispute in this action total **\$2,004.10**.

21. Attorney fees and costs incurred by the Defendants in this matter are reflected in the monthly statements prepared by McDonald Carano Wilson LLP. Attached to the Motion as **Exhibit 3** are true and correct copies of the invoices for this matter, with specific detail redacted to avoid disclosing attorney-client privileged communications and attorney work product. Nevada Controls does not intend, nor should it be interpreted, to waive any attorney/client communication privilege or other privilege.

22. The attorneys and paralegals in the McDonald Carano Wilson LLP firm generally enter their time on a daily basis as one combined entry for the services rendered to each separate client and client's matter on that date. At the end of each month, these individual entries are reviewed and approved before being assembled

into a monthly statement to the client, which includes a summary of the work performed by the time keeper each day and the total hours expended performing these services. Since being first engaged in this matter, all hourly time entries for professional services rendered by McDonald Carano Wilson LLP have been documented using a client number and matter number assigned to this representation.

23. The hourly rates are fair and reasonable rateS for professional services by litigation attorneys at McDonald Carano Wilson LLP with the level of experience and expertise we hold. My clients have been awarded fees in other matters at similar rates for my services and services of other attorneys of the firm.

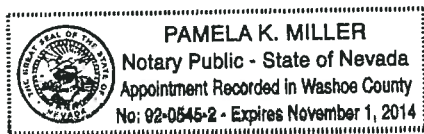
I, Leigh Goddard, do hereby affirm under penalty of perjury that the assertions in this Affidavit are true.

DATED: October 25, 2012.

  
LEIGH GODDARD

SUBSCRIBED AND SWORN to before  
me this 25<sup>th</sup> day of October 2012.

  
NOTARY PUBLIC



## **EXHIBIT 2**

## **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

NEVADA CONTROLS, LLC., a Nevada  
Limited Liability Company,

Plaintiff,

v.

WIND PUMP POWER, LLC, a Kansas Limited  
Liability Company; SUNFLOWER WIND, LLC, a  
Kansas Limited Liability Company, and DAN  
RASURE, an individual,

Defendants.

CASE NO.: 3:12:cv-00068-HDM-VPC

**BILL OF COSTS**

The Order granting the Motion to Compel having been entered in the above entitled action on October 18, 2012 against Defendants,

The Clerk is requested to tax the following as costs:

Fees of the Clerk .....	\$	
Fees for service of summons and subpoena .....	\$	
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case ....	\$	
Fees and disbursements for printing.....	\$	
Fees for witnesses (itemize on page two) .....	\$	
Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case. ....	\$	
Docket fees under 28 U.S.C. 1923 .....	\$	
Costs as shown on Mandate of Court of Appeals. ....	\$	
Compensation of court-appointed experts. ....	\$	
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828. ....	\$	
Other costs (please itemize) .....	\$	29.10
<b>TOTAL</b>	<b>\$</b>	<b>29.10</b>

**SPECIAL NOTE:** Attach to your bill an itemization and documentation for requested costs in all categories.

**DECLARATION**

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill has been served on all parties in the following manner:

- ☐ Electronic service by e-mail as set forth below and/or.  
☒ Convention service by first class mail, postage prepaid as set forth below.

/s/ Attorney: \_\_\_\_\_/s/ Leigh Goddard

Name of Attorney: Leigh Goddard

For: NEVADA CONTROLS, LLC.

Date: 10/25/12

Costs are taxed in the amount of \$ \_\_\_\_\_ and included in the judgment/order.

By:

Date \_\_\_\_\_

WITNESS FEES (computation, cf. 28 U.S.C. 1821 for statutory fees)							
NAME AND RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
TOTAL							

## NOTICE

**Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:**

"Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed"

**See also Section 1920 of Title 28, which reads in part as follows:**

"A bill of costs shall be filed in the case and, upon allowances, included in the judgment or decree."

**The Federal Rules of Civil Procedure contain the following provisions**

### Rule 54(d)

“Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs, but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day’s notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.”

### Rule 6(e)

“Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.”

### Rule 58 (In Part)

"Entry of the judgment shall not be delayed for the taxing of costs."

**BILL OF COSTS ITEMIZATION AND DOCUMENTATION****Clerk's Fees:**

Date	Description	Amount
		\$
	<b>Total</b>	<b>\$</b>

**Fees for service of Summons and Complaint:**

Date	Description	Amount
		\$
	<b>Total</b>	<b>\$</b>

**Other costs:****McDonald Carano Wilson, LLP Costs:**

Description	Dates	Amount
Photocopies	09/25/12	\$17.50
	10/17/12	\$ .75
Telephone Calls		\$
Westlaw computerized research charges	09/30/12	\$10.85
		\$
		\$
Federal Express		\$
		\$
		\$
	<b>Total</b>	<b>\$29.10</b>

## **EXHIBIT 3**

## **EXHIBIT 3**



McDONALD·CARANO·WILSON<sup>®</sup>

FEDERAL TAX ID 88-0074283

Nevada Controls, LLC  
5576 Bighorn Drive  
Carson City, NV 89701

Invoice No. 1200369  
September 17, 2012

FOR PROFESSIONAL SERVICES RENDERED through August 31, 2012:

Re: 015003-000002  
WIND PUMP POWER LLC

Current Fees \$ 700.00

<b>Total This Invoice</b>	<b>\$ 700.00</b>
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Trust Balance



100 WEST LIBERTY STREET, 10<sup>TH</sup> FLOOR  
RENO, NEVADA 89501

P.O. BOX 2670, RENO, NEVADA 89505  
775-788-2000 · FAX 775-788-2020

ATTORNEYS AT LAW



WWW.MCDONALDCARANO.COM

2300 WEST SAHARA AVENUE  
SUITE 1000  
LAS VEGAS, NEVADA 89102  
702-873-4100  
FAX 702-873-9966

McDONALD·CARANO·WILSON LLP

Invoice No. 1200369

Page 2

**Re:** 015003-000002  
WIND PUMP POWER LLC

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Date	Description of Services	Attorney	Hours
08/23/12	Prepare for and attend hearing on motion to strike; e-mail to client re [REDACTED]	LTG	1.00
08/29/12	Telephone conference with Jerry Wieslander	LTG	0.50
08/30/12	E-mail to client re update on conversation with Jerry Wieslander; e-mail to Rasure re discovery responses and scheduling order; review of e-mail from client and respond to same	LTG	0.50

Timekeeper	Hours	Rate/Hour	Amount
Leigh Goddard	2.00	350.00	<u>700.00</u>

Current Fees	\$	700.00
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**DRAFT****DRAFT****MCDONALD · CARANO · WILSON**

FEDERAL TAX ID 88-0074283

Nevada Controls, LLC  
 5576 Bighorn Drive  
 Carson City, NV 89701

Invoice No. \*\*\*\*\*  
 October 25, 2012

FOR PROFESSIONAL SERVICES RENDERED through October 25, 2012:

Re: 015003-000002  
 WIND PUMP POWER LLC

Balance Due From Previous Statement	\$	700.00	
Payments Received Since Previous Statement	\$	<u>0.00</u>	
Balance Forward	\$	700.00	
Current Fees	\$	3,983.75	
No Charge Courtesy Discount	\$	<u>(2,358.75)</u>	
Adjusted Fees	\$	1,625.00	
Current Disbursements	\$	<u>29.10</u>	
<b>Total Balance Due</b>	<b>\$</b>	<b>2,354.10</b>	

**Trust Balance \$ 10,000.00**

100 WEST LIBERTY STREET, 10<sup>TH</sup> FLOOR  
 RENO, NEVADA 89501

P.O. BOX 2670, RENO, NEVADA 89505  
 775-788-2000 · FAX 775-788-2020

ATTORNEYS AT LAW



WWW.MCDONALDCARANO.COM

2300 WEST SAHARA AVENUE  
 SUITE 1000  
 LAS VEGAS, NEVADA 89102  
 702-873-4100  
 FAX 702-873-9966

**Re:** 015003-000002  
WIND PUMP POWER LLC

Date	Description of Services	Attorney	Hours
09/19/12	Drafting motion to compel discovery (no charge 5.25)	ADHH	6.25
09/20/12	Continue drafting motion to compel discovery (no charge 2.00)	ADHH	3.50
09/21/12	Review and revise motion to compel (no charge .50)	LTG	1.50
09/24/12	Revise motion to compel; prepare declaration in support of motion to compel discovery responses; review and finalize motion (no charge .50)	LTG	1.50
09/25/12	Finalize motion to compel (no charge .25)	LTG	0.50
09/27/12	Review of e-mail from client; respond to same	LTG	0.25
10/17/12	Review of file status; prepare reply in support of motion to compel	LTG	0.25

Timekeeper	Hours	Rate/Hour	Amount
Leigh Goddard	4.00	350.00	1,400.00
Adam Hosmer-Henner	9.75	265.00	<u>2,583.75</u>

Current Fees	\$	3,983.75
No Charge Courtesy Discount	\$	<u>(2,358.75)</u>
Adjusted Fees	\$	1,625.00

Disbursement Description	Amount
Westlaw	10.85
Photo Copies	18.25

Current Disbursements	\$	<u>29.10</u>
Total Fees & Disbursements	\$	<u><u>1,654.10</u></u>